

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

NUCLEAR DEVELOPMENT LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 5:18-CV-01983-LCB
)	
TENNESSEE VALLEY)	CONDITIONALLY
AUTHORITY,)	UNOPPOSED
)	
Defendant.)	

**DEFENDANT’S MOTION TO DEPOSIT
FUNDS INTO THE COURT’S REGISTRY**

Defendant Tennessee Valley Authority (“TVA”), pursuant to Fed. R. Civ. P. 67 and General Order 17-1, moves this Court to enter an order allowing TVA to deposit funds in the amount owed by TVA under the Court’s Final Judgment into the Court’s registry. In support of this motion, TVA offers the following grounds:

1. On August 26, 2021, the Court entered its Final Judgment (Doc. 247). The Court entered judgment “in favor of Nuclear Development in the amount of \$22,950,000, plus prejudgment interest at a rate of 7.5% per annum, running from December 30, 2018 to the date of this final judgment.” Doc. 247.
2. The automatic stay of execution on the judgment expires on September 27, 2021. Fed. R. Civ. P. 62(a).

3. Under Rule 67, “a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it.” Fed. R. Civ. P. 67(a). Rule 67 requires that the “depositing party ... deliver to the clerk a copy of the order permitting deposit.” *Id.* Likewise, General Order 17-1 provides that no “money shall be deposited into the Court’s registry without a court order signed by the presiding judge in the case or proceeding.”

4. TVA intends to deposit into the Court’s registry \$22,950,000, plus pre-interest at the rate of 7.5% per annum¹ and post-judgment interest at the rate of 6% per annum² into the Court’s registry.

5. TVA’s counsel asked ND’s counsel if ND opposes this motion. ND’s counsel asked that the following statement be included in the motion: “ND conditionally does not register an objection to this motion only if such lack of objection is not construed by the Court or TVA as an admission or position taken by

¹ TVA has filed a motion asking the Court to amend its Final Judgment by adjusting the interest rate to the contractually agreed interest rate of 6% per annum. (Doc. 254) If the Court grants TVA’s motion to amend the judgment, TVA will move the Court to withdraw from the registry the amount of the difference between the two interest rates.

² The parties unambiguously agreed in the contract at issue in this case that the post-judgment interest rate would be 6 percent per annum. An unambiguous agreement by contracting parties as to the post-judgment interest rate controls. *See Walker v. Life Ins. Co. of N. Am.*, 2021 WL 2982108, at *2 (N.D. Ala. July 15, 2021).

ND that (i) ND has accepted or will accept such deposit in satisfaction of the judgment or (ii) TVA's Motion to Alter or Amend (Doc. 254) has merit. Otherwise, ND objects." TVA does not construe ND's lack of opposition to this motion as an admission or position on either point.

WHEREFORE, PREMISES CONSIDERED, TVA requests that this Court enter an order permitting it to deposit the amounts described above into the Court's registry.

Respectfully submitted this 17th day of September, 2021.

s/ Matthew H. Lembke

Attorney for Defendant

OF COUNSEL:

Matthew H. Lembke
Riley McDaniel
BRADLEY ARANT BOULT CUMMINGS LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203-2119
Telephone: (205) 521-8000
Facsimile: (205) 521-8800
mlembke@bradley.com
rmcdaniel@bradley.com

David D. Ayliffe
Ibrahim M. Berro
Office of the General Counsel
TENNESSEE VALLEY AUTHORITY
400 West Summit Hill Drive, WT6
Knoxville, Tennessee 37902
Telephone: (865) 632-3052

ddayliffe@tva.gov
jemccook@tva.gov
imberro@tva.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2021, a true and correct copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record:

Caine O'Rear, III
J. Craig Campbell
HAND ARENDALL HARRISON SALE, LLC
Post Office Box 123
Mobile, Alabama 36601
corear@handarendall.com

Edward Shane Black
HAND ARENDALL LLC
102 South Jefferson Street
Athens, Alabama 35611
sblack@handarendall.com

s/ Matthew H. Lembke

OF COUNSEL